

SEMANU MILO

(Name)

P.O. BOX 1050 SVSP

(Address)

SOLEDAD, CA. 93960

(City, State, Zip)

P-78110

(CDC Inmate No.)

| | | |
|------------------|-------|-------------------------------------|
| 2254 | 1983 | <input checked="" type="checkbox"/> |
| FILING FEE PAID | | |
| Yes | No | <input checked="" type="checkbox"/> |
| HFP MOTION FILED | | |
| Yes | No | <input checked="" type="checkbox"/> |
| COPIES SENT TO | | |
| Court | ProSe | <input checked="" type="checkbox"/> |

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| CLERK, U.S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA |
| BY <u>BN</u> DEPUTY |

United States District Court
Southern District of California

SEMANU MILO

(Enter full name of plaintiff in this action.)

Plaintiff,

v.

KEVIN R. FULLNERJ. DUESENBERGM. BECERRA

(Enter full name of each defendant in this action.)

Defendant(s).

) 07 CV 2255 JM PCL

Civil Case No. _____

(To be supplied by Court Clerk)

Complaint Under the
Civil Rights Act
42 U.S.C. § 1983

A. Jurisdiction

Jurisdiction is invoked pursuant to 28 U.S.C. § 1343(a)(3) and 42 U.S.C. § 1983. If you wish to assert jurisdiction under different or additional authority, list them below.

B. Parties

1. Plaintiff: This complaint alleges that the civil rights of Plaintiff, SEMANU MILO
(print Plaintiff's name)
, who presently resides at SALINAS VALLEY STATE
(mailing address or place of confinement)
PRISON, P.O. BOX 1050, SOLEDAD, CA. 93960, were violated by the actions
of the below named individuals. The actions were directed against Plaintiff at CALIPATRIA
PRISON BOX 5002 CALIPATRIA, CA on (dates) 04/27/01, _____, and _____.
(institution/place where violation occurred) (Count 1) (Count 2) (Count 3)
2. Defendants: (Attach same information on additional pages if you are naming more than 4 defendants.)

Defendant KEVIN R. FULLNER resides in IMPERIAL COUNTY,
(name) (County of residence)
 and is employed as a CORRECTIONAL OFFICER. This defendant is sued in
(defendant's position/title (if any))
 his/~~her~~ ☒ individual ☐ official capacity. (Check one or both.) Explain how this defendant was acting
 under color of law: DEFENDANT IS EMPLOYED BY THE STATE OF
CALIFORNIA, DEPARTMENT OF CORRECTIONS AND REHABILITATION.

Defendant J. DUESENBERG resides in IMPERIAL COUNTY,
(name) (County of residence)
 and is employed as a CORRECTIONAL OFFICER. This defendant is sued in
(defendant's position/title (if any))
 his/her ☐ individual ☐ official capacity. (Check one or both.) Explain how this defendant was acting
 under color of law: DEFENDANT IS EMPLOYED BY THE STATE OF
CALIFORNIA, DEPARTMENT OF CORRECTIONS AND REHABILITATION

Defendant M. BECERRA resides in IMPERIAL COUNTY,
(name) (County of residence)
 and is employed as a CORRECTIONAL OFFICER. This defendant is sued in
(defendant's position/title (if any))
 his/her ☐ individual ☐ official capacity. (Check one or both.) Explain how this defendant was acting
 under color of law: DEFENDANT IS EMPLOYED BY THE STATE OF
CALIFORNIA, DEPARTMENT OF CORRECTIONS AND REHABILITATION

Defendant _____ resides in _____,
(name) (County of residence)
 and is employed as a _____. This defendant is sued in
(defendant's position/title (if any))
 his/her ☐ individual ☐ official capacity. (Check one or both.) Explain how this defendant was acting
 under color of law: _____

C. Causes of Action (You may attach additional pages alleging other causes of action and the facts supporting them if necessary.)

Count 1: The following civil right has been violated: EIGHTH AMENDMENT

(E.g., right to medical care, access to courts,

FAILURE TO PROTECT

due process, free speech, freedom of religion, freedom of association, freedom from cruel and unusual punishment, etc.)

Supporting Facts: [Include all facts you consider important to Count 1. State what happened clearly and in your own words. You need not cite legal authority or argument. Be certain to describe exactly what each defendant, by name, did to violate the right alleged in Count 1.]

ON APRIL 27, 2001, AT APPROXIMATELY 1445 HOURS PLAINTIFF WAS
ATTACKED, ASSAULTED AND STABBED BY INMATE T, NEWBERRY
(D21791). PLAINTIFF WAS ASSIGNED TO THE FACILITY 'A' A.M.
YARD CREW AT CALIPATRIA STATE PRISON, CALIPATRIA CALIFORNIA.
AT THE TIME OF THE INCIDENT, PLAINTIFF WAS IN A "SECURE"
WORK AREA. PLAINTIFF'S ATTACKER SHOULD NOT HAVE BEEN IN
THE SECURED AREA AS HE WAS NOT ASSIGNED TO THE AREA OR
WORK CREW AND HIS SOLE PURPOSE TO BE IN THE AREA WAS TO
ATTACK AND ASSAULT PLAINTIFF. DEFENDANTS K. FULLNER,
J. DUESENBERG AND M. BECERRA WERE ASSIGNED TO AND HAD
CONTROL OVER THE SECURE AREA. IT WAS GROSS NEGLIGENCE
ON THE PART OF ALL THREE DEFENDANTS TO ALLOW PLAINTIFF'S
ATTACKER TO PASS THROUGH TWO (2) LOCKED GATES, AND INTO THE
SECURE AREA. DEFENDANTS WERE REQUIRED TO SEARCH ALL
INMATES, INCLUDING ASSIGNED WORKERS BEFORE ALLOWING INMATES
THROUGH A GATE OR INTO A SECURE AREA. DEFENDANTS DID NOT
PERFORM THEIR ASSIGNED DUTIES AND ALLOWED PLAINTIFF'S
ARMED ATTACKER INTO THE SECURED AREA WITH A WEAPON, WHICH
THEN WAS USED TO SERIOUSLY INJURE PLAINTIFF. INJURIES THAT
REQUIRED STITCHES IN TWO (2) PLACES, PUNCTURE WOUNDS, ETC.
DEFENDANTS GROSSLY FAILED TO PROTECT PLAINTIFF. PLAINTIFF
CONTINUES TO SUFFER FROM STRESS, DEPRESSION, NIGHTMERS
AND OTHER EMOTIONAL PROBLEMS AS A RESULT OF THE INCIDENT.

Count 2: The following civil right has been violated: _____
(E.g., right to medical care, access to courts, _____)

Supporting Facts: [Include all facts you consider important to Count 2. State what happened clearly and in your own words. You need not cite legal authority or argument. Be certain to describe exactly what each defendant, *by name*, did to violate the right alleged in Count 2.]

Count 3: The following civil right has been violated: _____

(E.g., right to medical care, access to courts,

due process, free speech, freedom of religion, freedom of association, freedom from cruel and unusual punishment, etc.)

Supporting Facts: [Include all facts you consider important to Count 3. State what happened clearly and in your own words. You need not cite legal authority or argument. Be certain to describe exactly what each defendant, *by name*, did to violate the right alleged in Count 3.]

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

D. Previous Lawsuits and Administrative Relief

1. Have you filed other lawsuits in state or federal courts dealing with the same or similar facts

involved in this case? ☐ Yes ☐ No.

If your answer is "Yes", describe each suit in the space below. [If more than one, attach additional pages providing the same information as below.]

(a) Parties to the previous lawsuit:

Plaintiffs: SEMANU MILO

Defendants: SILVIA GARCIA, et al.

(b) Name of the court and docket number: U.S. DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA, CIVIL NO 04-0965 - BTM (BLM)

(c) Disposition: [For example, was the case dismissed, appealed, or still pending?] DISMISSAL OF ACTION WITHOUT PREJUDICE

(d) Issues raised: EIGHTH AMENDMENT - FAILURE TO PROTECT

(e) Approximate date case was filed: APRIL 21, 2004

(f) Approximate date of disposition: AUGUST 22, 2005

2. Have you previously sought and exhausted all forms of informal or formal relief from the proper administrative officials regarding the acts alleged in Part C above? [E.g., CDC Inmate/Parolee Appeal Form 602, etc.] ? ☒ Yes ☐ No.

If your answer is "Yes", briefly describe how relief was sought and the results. If your answer is "No", briefly explain why administrative relief was not sought.

PLAINTIFF FILED A CDC INMATE/PAROLEE APPEAL FORM ON MAY 5, 2001, APRIL 13, 2004, FEBRUARY 15, 2006
PLAINTIFF HAS COMPLETED ALL AVAILABLE ADMINISTRATIVE REMEDIES.

E. Request for Relief

Plaintiff requests that this Court grant the following relief:

1. An injunction preventing defendant(s): _____

2. Damages in the sum of \$ 480,000.00.

3. Punitive damages in the sum of \$ 480,000.00.

4. Other: ALL COURTS COSTS AND ATTORNEY FEES.

F. Demand for Jury Trial

Plaintiff demands a trial by ☒ Jury ☐ Court. (Choose one.)

G. Consent to Magistrate Judge Jurisdiction

In order to insure the just, speedy and inexpensive determination of Section 1983 Prisoner cases filed in this district, the Court has adopted a case assignment involving direct assignment of these cases to magistrate judges to conduct all proceedings including jury or bench trial and the entry of final judgment on consent of all the parties under 28 U.S.C. § 636(c), thus waiving the right to proceed before a district judge. The parties are free to withhold consent without adverse substantive consequences.

The Court encourages parties to utilize this efficient and expeditious program for case resolution due to the trial judge quality of the magistrate judges and to maximize access to the court system in a district where the criminal case loads severely limits the availability of the district judges for trial of civil cases. Consent to a magistrate judge will likely result in an earlier trial date. If you request that a district judge be designated to decide dispositive motions and try your case, a magistrate judge will nevertheless hear and decide all non-dispositive motions and will hear and issue a recommendation to the district judge as to all dispositive motions.

You may consent to have a magistrate judge conduct any and all further proceedings in this case, including trial, and the entry of final judgment by indicating your consent below.

Choose only one of the following:

☐ Plaintiff consents to magistrate judge jurisdiction as set forth above.

OR

☐ Plaintiff requests that a district judge be designated to decide dispositive matters and trial in this case.

11/25/07
Date


Signature of Plaintiff

SEMANU MILO

JS44

(Rev. 07/89)

CIVIL COVER SHEET

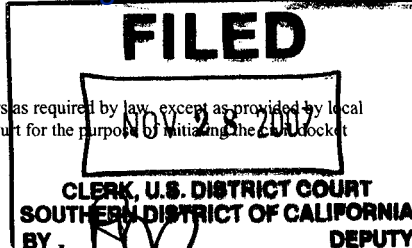
The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1983, is required for the use of the Clerk of Court for the purpose of initiating the docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM)

I (a) PLAINTIFFS

Semanu Milo

| | |
|-------------------------|--|
| FILING FEE PAID | |
| Yes | No <input checked="" type="checkbox"/> |
| HFP MOTION FILED | |
| Yes | No <input checked="" type="checkbox"/> |
| COPIES SENT TO | |
| Court | Pro Se |

Fullner, et al



(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Monterey
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Semanu Milo
PO Box 1050
Soledad, CA 93960
P-78110

ATTORNEYS (IF KNOWN)

'07CV 2255 JM PCL

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | PT | DEF | PT | DEF |
|----------------------------|----------------------------|----------------------------|----------------------------|
| <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
- Citizen of This State Incorporated or Principal Place of Business in This State
- Citizen of Another State Incorporated and Principal Place of Business in Another State
- Citizen or Subject of a Foreign Country Foreign Nation

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

42 U.S.C. 1983

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

| CONTRACT | TORTS | | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|---|--|---|--|--|--|
| <input type="checkbox"/> 110 Insurance | PERSONAL INJURY | PERSONAL INJURY | <input type="checkbox"/> 610 Agriculture | <input type="checkbox"/> 422 Appeal 28 USC 158 | <input type="checkbox"/> 400 State Reappointment |
| <input type="checkbox"/> Marine | <input type="checkbox"/> 310 Airplane | <input type="checkbox"/> 362 Personal Injury-Medical Malpractice | <input type="checkbox"/> 620 Other Food & Drug | <input type="checkbox"/> 423 Withdrawal 28 USC 157 | <input type="checkbox"/> 410 Antitrust |
| <input type="checkbox"/> Miller Act | <input type="checkbox"/> 315 Airplane Product Liability | <input type="checkbox"/> 365 Personal Injury - Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 | PROPERTY RIGHTS | <input type="checkbox"/> 430 Banks and Banking |
| <input type="checkbox"/> Negotiable Instrument | <input type="checkbox"/> 320 Assault, Libel & Slander | <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability | <input type="checkbox"/> 630 Liquor Laws | <input type="checkbox"/> 820 Copyrights | <input type="checkbox"/> 450 Commerce/ICC Rates/etc. |
| <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment | <input type="checkbox"/> 330 Federal Employers' Liability | <input type="checkbox"/> 370 Other Fraud | <input type="checkbox"/> 640 RR & Truck | <input type="checkbox"/> 830 Patent | <input type="checkbox"/> 460 Deportation |
| <input type="checkbox"/> 151 Medicare Act | <input type="checkbox"/> 340 Marine | <input type="checkbox"/> 371 Truth in Lending | <input type="checkbox"/> 650 Airline Regs | <input type="checkbox"/> 840 Trademark | <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations |
| <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) | <input type="checkbox"/> 345 Marine Product Liability | <input type="checkbox"/> 380 Other Personal Property Damage | <input type="checkbox"/> 660 Occupational Safety/Health | SOCIAL SECURITY | <input type="checkbox"/> 810 Selective Service |
| <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits | <input type="checkbox"/> 350 Motor Vehicle | <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 690 Other | <input type="checkbox"/> 861 HIA (13958) | <input type="checkbox"/> 850 Securities/Commodities Exchange |
| <input type="checkbox"/> 160 Stockholders Suits | <input type="checkbox"/> 355 Motor Vehicle Product Liability | <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus | LABOR | <input type="checkbox"/> 862 Black Lung (923) | <input type="checkbox"/> 875 Customer Challenge 12 USC |
| <input type="checkbox"/> Other Contract | <input type="checkbox"/> 360 Other Personal Injury | <input type="checkbox"/> 530 General | <input type="checkbox"/> 710 Fair Labor Standards Act | <input type="checkbox"/> 863 DIWC/DIWW (405(g)) | <input type="checkbox"/> 891 Agricultural Acts |
| <input type="checkbox"/> 195 Contract Product Liability | CIVIL RIGHTS | <input type="checkbox"/> 535 Death Penalty | <input type="checkbox"/> 720 Labor/Mgmt. Relations | <input type="checkbox"/> 864 SSID Title XVI | <input type="checkbox"/> 892 Economic Stabilization Act |
| REAL PROPERTY | <input type="checkbox"/> 441 Voting | <input type="checkbox"/> 540 Mandamus & Other | <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act | <input type="checkbox"/> 865 RSI (405(e)) | <input type="checkbox"/> 893 Environmental Matters |
| <input type="checkbox"/> 210 Land Condemnation | <input type="checkbox"/> 442 Employment | <input type="checkbox"/> 550 Civil Rights | <input type="checkbox"/> 740 Railway Labor Act | FEDERAL TAX SUITS | <input type="checkbox"/> 894 Energy Allocation Act |
| <input type="checkbox"/> 220 Foreclosure | <input type="checkbox"/> 443 Housing/Accommodations | | <input type="checkbox"/> 790 Other Labor Litigation | <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) | <input type="checkbox"/> 895 Freedom of Information Act |
| <input type="checkbox"/> 230 Rent Lease & Eiectmant | <input type="checkbox"/> 444 Welfare | | <input type="checkbox"/> 791 Empl. Ret. Inc. | <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609 | <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice |
| <input type="checkbox"/> 240 Tort to Land | <input type="checkbox"/> 440 Other Civil Rights | | <input type="checkbox"/> Security Act | | <input type="checkbox"/> 950 Constitutionality of State |
| <input type="checkbox"/> 245 Tort Product Liability | | | | | <input type="checkbox"/> 890 Other Statutory Actions |
| <input type="checkbox"/> 290 All Other Real Property | | | | | |

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions):

JUDGE

Docket Number

DATE 11/28/2007

SIGNATURE OF ATTORNEY OF RECORD